THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.8765 of 1996

DATE: 1-9-2005

Between:

Ravi Hari Babu …….. Petitioner

And

The Government of A.P. rep.by

Its Principal Secretary, Education (CEI) Dept,

Hyderabad ……. Respondents

And two others

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.8765 of 1996

ORAL ORDER:

The proceedings of the 1st respondent, dated 29-11-1995, directing the Commissioner of Collegiate Education to shift the petitioner to a needy aided post, is impugned in this writ petition as an order passed without jurisdiction.

The facts, to the extent necessary for the purpose of this writ petition, are that the petitioner was appointed as a Library Clerk on 26-11-1986 in the 3rd respondent – college. The Government, in G.O.Rt.No.1732 dated 29-10-1986, granted sanction for the post of Library Clerk in the 3rd respondent – college, as a special case, in relaxation of G.O.Ms.No.75, dated 7-2-1984 subject to the condition that no grant-in-aid would be given to the institution in respect of the said post then or any time in future. The Government had, vide proceedings dated 21-11-1988, ratified the action of the 3rd respondent in appointing the petitioner as a Library Clerk duly relaxing the age rule in his favour.

Consequent upon the proceedings dated 25-7-1992 being issued, whereby the salary of the petitioner was sought to be stopped, the petitioner filed W.P.No.465 of 1993, and this Court by order dated 30-11-1994, allowed the writ petition directing the Director of College Education to release the grant-in-aid to the 3rd respondent – college for payment of salary of the petitioner and to include the name of the petitioner in the fly leaf. This Court, while directing that arrears shall be paid within three months, held that the order of the government in G.O.Rt.No.1732 dated 29-10-1986 refusing to give grant in aid was not supported by good and sufficient reasons

and was contrary to Section 45(2) of the A.P. Education Act, 1982. The order of this Court, in W.P.No.465 of 1993 dated 30.11.1994, has attained finality.

Pursuant to the order of this Court, in W.P.465 of 1993 dated 30-11-1994, the 1st respondent directed the Commissioner to release the grant in aid to the management of the 3rd respondent so as to pay to the petitioner salary of Library Clerk (second junior assistant) by including his name in the fly leaf. However, under the same order, the Commissioner was directed to shift the petitioner to an aided post in another college. Pursuant to the said order, dated 29-11-1995, the Commissioner of Collegiate Education, vide proceedings dated 2-1-1996, transferred the petitioner, who was working as a Library Clerk, to the Veda & Sanskrit College, Mulapet, Nellore District in the existing vacancy of a Library Clerk.

Sri K.Harinath, learned counsel for the petitioner, would submit that since the appointment of the petitioner as Library Clerk had been ratified in proceedings dated 21-11-1988 consequent upon sanction being accorded for creation of the post of Library Clerk in the 3rd respondent college, vide proceedings dated 29-10-1986, the petitioner has been holding the post of Library Clerk in 3rd respondent college ever since then, and pursuant to the orders of this Court in W.P.No.465/95 dated 30-11-1994, the said post has been admitted to grant in aid. Learned counsel would submit that the respondents have no jurisdiction to transfer a person, who is occupying a sanctioned post which has been taken to grand in aid, to an aided post in another college without his consent. Learned counsel would submit that the petitioner has been styled as “Second Junior Assistant” in the impugned proceedings dated 29-11-1995 and as surplus library clerk in the proceedings dated 2-1-1996 which are both factually incorrect, inasmuch as the petitioner is working in the sanctioned post of Library Clerk, his appointment was ratified by the Government and that he could not be considered as either a second junior assistant or a surplus library clerk. Learned counsel would contend that neither the A.P. Education Act nor any other law empowers the authorities to transfer an employee, working in an aided post in one college, to another aided post in a different college without obtaining his consent thereto.

Learned Government Pleader for Higher Education would submit that under G.O.Rt.No.1732 dated 29-10-1986 the Government had accorded sanction for creation of one post of Library Assistant in the 3rd respondent – college subject to

the condition that no aid would granted by the Government to the institution in respect of the said post. Learned Government pleader would submit that since the post was required to be provided with grant in aid, pursuant to the orders of this Court in W.P.465/93 dated 30-11-1994, it became necessary, to reduce the financial burden on the Government, to transfer the services of the petitioner to an aided post in a different college. The learned Government Pleader would submit that sanction of the post of Library Clerk in the 3rd respondent – college was subject to the condition that no grant in aid would be claimed and since the Government was now mulcted with financial liability in this regard, it became necessary to transfer the petitioner. Learned Government Pleader would refer to G.O.Ms.No.890, Education ICEII) Department dated 2-8-1996 in support of her submission that surplus employees of private degree/junior colleges would be transferred to needy colleges in the same zone. Sri K.Harinath, learned counsel for the petitioner, would, however point out, rightly, that G.O.Rt.No.890 dated 2-8-1996 relates to cases of surplus lecturers and junior lecturers and since the petitioner is working as Library Clerk, he is not covered by G.O.Rt.No.890 dated 2-8-1996. Learned counsel would place reliance on the judgment of the Supreme Court in **Central Officer Commanding-in-Chief v. DR Subhash Chandra Yadav** in support of his contention that employees of one autonomous body cannot be transferred to another without their consent.

The larger question as to whether the Government is empowered, to transfer employees working in private aided institutions or aided post in a private college to another aided post in a different college without their consent, need not be gone into, as the writ petition is to be allowed on the short ground that the power to transfer employees from one aided post to another, even according to the learned Government Pleader and as stated in the impugned proceedings dated 20-1-1996, can only be exercised when a person is working in a surplus post. From the aforesaid facts, it is clear that sanction was accorded by the Government for creation of a post of Library Clerk and appointment of the petitioner, in the said post of Library Clerk, was also ratified by the Government. As such the petitioner cannot be said to be working in a surplus post nor can he be considered to be a surplus employee enabling the Government to transfer him to another college. Since the petitioner is working in the sanctioned post of Library Clerk, which is not a surplus post, the impugned orders dated 29-11-1995 and 2-1-1996 seeking to transfer the petitioner to another college in the vacancy of a Library Clerk Post are hereby set aside. The

writ petition is accordingly allowed. No cost.

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1-9-2005

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